



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67 of the *Act*.

The landlord did not attend this hearing. The tenant and the tenant's agent attended the hearing and provided sworn testimony. The tenant's agent, N.B., primarily spoke on behalf of the tenant.

Preliminary Issue – Service of Notice of Dispute Resolution Proceeding Documents

As only the tenant and the tenant's agent N.B. attended the hearing, I asked N.B. to confirm that they had served the respondent, who was the landlord in this matter, with the Notice of Dispute Resolution Proceeding for this hearing. N.B. testified that she had served the notice of this hearing to the landlord by placing a copy of the Notice of Dispute Resolution Proceeding package in the landlord's mailbox at the landlord's residence on December 29, 2017. The tenant stated that the package was returned to them undelivered.

I noted that in the tenant's Application for Dispute Resolution for this hearing, there was a discrepancy between the landlord's address provided in the tenant's application, and the landlord's address noted in the documents submitted into evidence by the tenant, such as: the copy of the deposit cheque provided to the landlord by the tenant; the landlord's notice to vacate premises; and the rental dispute statement written by the tenant's agent summarizing the issues of the dispute.

I explained to the tenant that it is important to be able to confirm that the correct address for the landlord has been obtained in order to ensure proper service of documents.

Where a respondent is not at the hearing, the applicant bears the burden to prove the respondent was served with notification of the hearing and the claims against them.

Since this application pertains to a monetary claim by a tenant against a landlord, the only methods of service that are permissible, as outlined in section 89(1) of the Act, are as follows:

- serving the landlord (or an agent of the landlord) in person with a copy of the Notice of Dispute Resolution Proceeding package;
- sending a copy of the Notice of Dispute Resolution Proceeding package by registered mail to the address at which the landlord resides, or to the address at which the landlord carries on business as a landlord; or
- as ordered by the director (or director's representative) for the Residential Tenancy Branch.

Further particulars on to how to carry out service are provided in Residential Tenancy Policy Guideline 12. Service Provisions, in Part 4:

i. Personal service

o Where a tenant is personally serving a landlord, the tenant must serve a document by leaving a copy of it with the landlord or an agent of the landlord...

This requires physically handing a copy of the document to the person being served. If the person declines to take the document, it may be left near the person so long as the person serving informs the person being served of the nature of the document being left near them.

ii. Registered Mail

o Where a tenant is serving a landlord by Registered Mail, the address for service must be where the landlord resides at the time of mailing or the address at which the landlord carries on business as a landlord...

The tenant has the burden of proving service by one of these methods, as explained in Part 15 of Policy Guideline 12, as follows:

Where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package.

...

Where proof of service is required, the person who actually served the documents must either:

- *be available as a witness in the hearing to prove service, or*
- *provide a signed statement with the details of how the documents were served.*

*Proof of service **personally** should include the date and time of service, the location where service occurred, description of what was served, the name of the person who was served, and the name of the person who served the documents.*

*Proof of service by **Registered Mail** should include the original Canada Post Registered Mail receipt containing the date of service, the address of service, and that the address of service was the person's residence at the time of service, or the landlord's place of conducting business as a landlord at the time of service as well as a copy of the printed tracking report.*

Failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.

In this case, I find that the tenant failed to establish that the landlord was served with notification of this proceeding in a manner that complies with section 89(1) of the *Act*. Therefore, I order this application dismissed, and grant the tenant liberty to reapply. I make no findings on the merits of the matter. The issuance of this decision with leave to reapply does not extend any applicable time limits under the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Conclusion

As the notice of this hearing was not served on the landlord in accordance with section 89 of the *Act*, I dismiss this application, but grant the tenant liberty to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 3, 2018

Residential Tenancy Branch